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**From:** Wetherington, Michele [Wetherington.Michele@epa.gov]  
**Sent:** 11/28/2018 6:43:04 PM  
**To:** Cooper, Jamal [cooper.jamal@epa.gov]; Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Bouma, Stacey [Bouma.Stacey@epa.gov]  
**Subject:** FW: GA Narrative WQS Update  
**Attachments:** GA Sup Ct case Guyton v Barrow s18c0944.pdf

FYI on the GA Supreme Court case

Michele

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**From:** Wetherington, Michele  
**Sent:** Wednesday, November 21, 2018 12:33 PM  
**To:** Palmer, Leif <Palmer.Leif@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>  
**Cc:** Baschon, Carol <Baschon.Carol@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>  
**Subject:** RE: GA Narrative WQS Update

It means OGC. Specifically, Tom Glazer in OGC told me yesterday that "I just spoke to the Deputy General Counsel. He agrees that we shouldn't act until the Georgia Supreme Court has had a chance to weigh in." Tom is who suggested a staff call with OST and R4 after the holiday to discuss the impacts of the revision, whether "unreasonably" is a substantive or non-substantive change. As a reminder, Jeaneanne and Trey were in agreement with R4 staff that it is a substantive change.

Regarding the GA Supreme Court case, the case status is docketed and active with no oral argument scheduled yet. However, Hutton Brown of SELC, representing the Altamaha Riverkeeper, sent a letter in September alerting the Court of a recent grant of cert in another case that may have an impact on this one and asked the Court to hold the case in abeyance. The Clerk confirmed the case is not officially being held in abeyance. This recent case is City of Guyton v Barrow, case number S18C0944 now case number S18G0944. The Clerk let me know that oral argument is scheduled for Jan 22<sup>nd</sup>.

Attached is the Court order with the 2 issues before the Court, which are:

(1) What level of judicial deference should be afforded to a state agency in its interpretation of its own internal rules and regulations? (2) Does the Georgia Department of Natural Resources, Environmental Protection Division's antidegradation rule, Ga. Comp. R. & Regs. r. 391-3-6-.03 (2) (b) (ii), require an antidegradation analysis before issuing a permit to a facility that will discharge pollutants from a nonpoint source into the waters of this State?

Thanks,

Michele

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**From:** Palmer, Leif  
**Sent:** Wednesday, November 21, 2018 10:17 AM  
**To:** Ghosh, Mita <Ghosh.Mita@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>  
**Cc:** Baschon, Carol <Baschon.Carol@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>  
**Subject:** FW: GA Narrative WQS Update

Hi Mita & Michelle – see below. Please find out if the "they" referenced below OGC or Georgia?

Please assume that Mary will ask if we know when and if the Supreme Court will rule. Suggest that Michelle either call an attorney for the matter or have someone (Saundi, Joshua Grimes) check and see if the Supreme Court has a calendar for the case for oral argument or a briefing schedule.

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**From:** Zapata, Cesar

**Sent:** Wednesday, November 21, 2018 9:40 AM

**To:** Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>

**Cc:** Allenbach, Becky <[Allenbach.Becky@epa.gov](mailto:Allenbach.Becky@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>

**Subject:** RE: GA Narrative WQS Update

That's the plan.

César A. Zapata

Deputy Director

Water Protection Division

United States Environmental Protection Agency, Region 4

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**From:** Walker, Mary

**Sent:** Wednesday, November 21, 2018 9:39 AM

**To:** Zapata, Cesar <[Zapata.Cesar@epa.gov](mailto:Zapata.Cesar@epa.gov)>

**Cc:** Allenbach, Becky <[Allenbach.Becky@epa.gov](mailto:Allenbach.Becky@epa.gov)>; Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; Ashbee, Blake <[ashbee.blake@epa.gov](mailto:ashbee.blake@epa.gov)>; Jenkins, Brandi <[Jenkins.Brandi@epa.gov](mailto:Jenkins.Brandi@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>

**Subject:** Re: GA Narrative WQS Update

Thank you for this information Cesar. Once you all have spoken to OST, let's get together to discuss. And please include Leif because I will want to understand the status of the GA case and the implications of this too.

Sent from my iPhone

On Nov 21, 2018, at 9:30 AM, Zapata, Cesar <[Zapata.Cesar@epa.gov](mailto:Zapata.Cesar@epa.gov)> wrote:

Mary,

Per our quick discussion yesterday, here is the latest on the GA Narrative WQS. Matt Leopold was interested in the WQS revision when Leif mentioned it on Thursday's OGC call. David Fotouhi asked for information on the WQS revision. Tom Glazer, the staff attorney assigned from OGC, talked to David Fotouhi yesterday about the revision and agreed on waiting for you to agree or disagree with the staff recommendation of a partial disapproval. However, **they** are also contemplating waiting for the GA Supreme Court to make a decision on the state court case that has been appealed from the Court of Appeals, regarding deference to GA's interpretation of its narrative before the revision was made. OGC also said that the Office of Science and Technology (OST) should weigh in on whether GA's revision is substantive or non-substantive. We have generally talked to OST, but plan to have a more in depth discussion with them once staff are back after the holiday.

Let us know if you have any questions.

César A. Zapata

Deputy Director

Water Protection Division

United States Environmental Protection Agency, Region 4

